IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 12TH JANUARY 2007 / 22ND PAUSHA 1928

WA.No. 66 of 2007(B)

AGAINST THE JUDGEMENT IN WPC.12776/2006 Dated 04/12/2006
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APPELLANT: PETITIONER IN W.P.(C):

MANAGER, KARIMPUZHA HIGHER SECONDARY SCHOOL, THOTTARA P.O., KARIMPUZHA, PALAKKAD DISTRICT.

BY ADV. SRI.MILLU DANDAPANI

RESPONDENTS: RESPONDENTS 1 TO 4 - ADDL.5HT RESPONDENT IN WP(C)
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1. **STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVERNEMNT, GENERAL EDUCATION DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE REGIONAL DEPUTY DIRECTOR, OFFICE OF THE REGIONAL DIRECTORATE, HIGHER SECONDARY EDUCATION, EDAPPALLY, ERNAKULAM.**

3. **SMT.K.JANAKI, KARIMPUZHA HIGHER SECONDARY SCHOOL, THOTARA P.O., KARIMPUZHA, PALAKKAD DISRICT.**

4. **SHRI RAVINDRANATH C.R., PRINCIPAL, KARIMPUZHA HIGHER SECONDARY SCHOOL, THOTTARA P.O., KARIMPUZHA, PALAKKAD DISTRICT.**

5. **THE DIRECTOR OF HIGHER SECONDARY EDUCATION, HOUSING BOARD BUILDINGS,**

TRIVANDRUM 695 001.
(ADDL.5TH RESPONDENT IMPLEADED AS PER ORDER IN IA.NO.8848/2006).

R3 BY ADV. SRI.KRB.KAIMAL (SR.)& MR. SALIL NARAYANAN

R1,2 & 5 BY GOVT. PLEADER MR. SANDESH RAJA

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 12/01/2007, ALONG WITH ZWA NO. 23 OF 2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.A.ABDUL GAFOOR &

K.R. UDAYABHANU, JJ.

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W.A.NOS. 66, 76 & 92 OF 2007

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DATED THIS THE 12TH DAY OF JANUARY 2007

JUDGMENT

Abdul Gafoor,J.

W.A.Nos.66 and 76 of 2007 are filed by the Manager of a Higher Secondary School and W.A.No. 92/2007 is filed by the incumbent appointed by that Manager as Principal of the Higher Secondary School. They are aggrieved by the common judgment in W.P.(C).No.9488/2006 and in W.P.(C).No.12776/2006. The appellant in W.A.No.92/2007 is not a party in those writ petitions. Therefore, he sought leave as by reason of the impugned judgment his appointment as Principal was at stake.

2. The issue is whether the appointment of the first respondent in W.A.No.76/2007, Smt.Janaki as Principal as per Ext.P2 in W.P.(C)No. 9488/2006 on

4-10-2004 was only an ad hoc arrangement or regular arrangement.

3. The said Janaki was appointed after a selection process as revealed by Ext.P3, as Principal on 4-10-2004 and the appointment order was forwarded to the Director of Higher Secondary Education for approval and approval has been granted as per Ext.P9 dated 5-4-2006 with effect from the date of appointment as such, during the pendency of the writ petitions. While she was holding the post of Principal based on Ext.P2 appointment order, the Manager initiated proceedings for fresh selection to the post of Principal. Therefore, she approached this Court with W.P.(C).No.9488/2006 assailing that selection process. In the meanwhile the Manager appointed one Ravindranath, appellant in W.A.No.92/2007. But the department interdicted it. Therefore, the Manager came up with W.P.(C).No.12776/2006. Both these writ petitions were disposed of by the impugned common judgment by the learned single Judge upholding such

interdiction and upholding the claim of said Janaki to continue as Principal. Therefore, these appeals by the Manager and the said Ravindranath.

4. The contention by both the appellants including the Manager is that Ext.P2 whereby the said Janaki was enabled to hold the post of Principal was not on appointment but only on placement, which is an ad hoc basis; because at that time there was no post of Principal. The post of Principal was sanctioned as per G.O.MS.11/2006 dated 6-1-2006, Ext.P1 marked in W.P.(C).No.12776/2006. Pursuant to that Government Order, a circular was issued on 25-2-2006 directing the Managers of all Aided Higher Secondary Schools to appoint Principals in the newly created posts. The said Government order was issued pursuant to the direction contained in the judgment of the Full Bench of this Court reported in **A.H.S.S.T.Assn. v. State of Kerala [2005(1)KLT 94].** Thus it is clear that when Ext.P2 appointment was effected on 4-10-2004, there were no posts of

Principal and accordingly such appointment can be regarded only as an ad hoc arrangement, to do the duties attached to the academic and administrative head in the school, it is submitted. Therefore, pursuant to the Government Order and Circular referred to above, fresh process of selection was conducted in which the said Janaki did not participate. The said Ravindranath was duly selected on regular basis. So Janaki has to give place to Ravindranath, the regular appointee, it is contended. Therefore, the learned single Judge was not justified in holding that the appointment of Janaki as per Ext.P2 was regular. It was also pointed out that the Full Bench in **A.H.S.S.T.Assn. v. State of Kerala (2005(1)KLT 94)** has directed the Managers to make appointment of Principals strictly on the basis of the statutory Rules. Therefore, the second selection process in which Ravindranath was appointed was not in any way unjustified. These contentions are reiterated by the said Ravindranath, the appellant in

W.A.No.92/2007 also.

5. It is contended by the counsel for Janaki that the Rules regulating the method of appointment and selection to the post of Principal was promulgated with effect from 12-11-2006 when Chapter 32 was introduced to the K.E.R. Category No.1 under Rule 4 is the Principal and Note 1 prescribed the method of selection. The method of appointment as provided under Rule 4 against duly noted post of Principal could be prescribed only when there was such post. Moreover the prescription of a particular procedure for selection as contained in the note under the category 'Principal' also is indicative of the existence of the post. Further more, it is submitted that on every year the establishment of a school has to be sanctioned and such sanction order will contain the post of Principal. It is pointed out that none of the appellants has a case that the staff fixation order for the respective year in which Janaki was appointed did not sanction

the post of a Principal. In such circumstances, it cannot be contended that there was no post of Principal. Moreover, her appointment order also reveals that it was after due selection process. When such regular appointment was made there was no vacancy to hold a fresh selection and to appoint Ravindranath.

6. Therefore, what we have to examine is whether the appointment effected by the appellant-Manager as per Ext.P2 in W.P.(C)No.9488/2006 is an ad hoc arrangement which will enable a fresh selection to the post. In this regard it is profitable to extract paragraph 8 of the judgment of the Full Bench in **A.H.S.S.T.Assn. v. State of Kerala (2005(1)KLT 94)** which reads as under:

> *"8. It is pointed out that some of the Headmasters who were qualified as on the date of coming into force of the Rules, though not appointed in the ratio prescribed as per the Rules, and are continuing even today should be given an equitable relief. It is true that*

Headmasters who were re-designated as Principals on the basis of ad hoc orders and are not educationally qualified, have to go back as Headmasters. They will continue as Headmasters of High School Division upto standard 10 and they cannot claim to be the Principals of Higher Secondary Schools. But those Headmasters who are educationally qualified when Special Rules framed and are continuing as Principal even today shall be allowed to continue, but their ratio has to be adjusted in the subsequent or other vacancies. But that benefit is not available to those Headmasters who are not continuing as on today as Principal and those headmasters who were not educationally qualified when relevant rules came into force. After framing of the rules recruitment has to be made strictly as per the statutory rules. Hence those persons appointed or placed as Principals after statutory rules came into force have to vacate the office. We also make it clear that the post of Principal is compulsory in

the Higher Secondary Schools as without the head of the institution, it cannot function. Post of Principal is an essential pivotal post. Therefore, Government is directed to give sanction and approval to the post of Principal expeditiously so that no Higher Secondary School shall work without a regular Principal. That post is made compulsory as per the Rules and classified as category No.1. We also direct the Managers to make appointment of Principal strictly on the basis of the rules framed as per Chapter XXXII and submit the matter for approval to the Government. It is for the Government to fix the scale of pay of Principal. It can be on a special scale of pay or special allowance to that of a Senior Higher Secondary School Teacher in category NO.II. These are matters of policy and we are not making any direction regarding fixation of scale of pay. If the appointments are made as per the Rules, that should be approved, if not already approved. The services of Headmasters who are continuing without the requisite

qualification as prescribed under Chapter XXXII on the date of coming into force of the Rules, should be terminated forthwith and they will go back as Headmasters. Management and Educational Authority are also directed to see that appointments are made strictly as per the Rules after enforcement of the Statutory Rules."

7. Now when the rules are framed only qualified persons alone can continue in the post of Principal. Smt. Janaki is qualified for the post, that is not a fact disputed. Of course, a reading of the passage quoted from the Full Bench reveals some ambiguity. It reveals that **"the Government is directed to give sanction and approval to the post of Principal expeditiously so that no Higher Secondary School shall work without a regular Principal. That post is made compulsory as per the Rules classified as category No.1. We also direct the Managers to make appointment of Principal strictly on the basis of the rules framed as per**

Chapter XXXII and submit the matter for approval to the Government." Thus there are two directions, 1) to the Government "to give sanction and approval to the post of Principal" and 2) to the Managers "to make appointment of Principal strictly on the basis of the Rules framed as per Chapter XXXII and submit the matter for approval to the Government". The second direction was issued noticing that "**the post of Principal made compulsory as per the Rules and classified as category No.1".**

8. Therefore, the Full Bench has taken note of the fact that as per the Rules in Chapter XXXII K.E.R. vide category No.1 therein, the post of Principal was made compulsory to every school. That means the post was available in the school. In such circumstances what shall be the import of the direction just before this statement that the Government is directed **to give sanction and approval to the post?** It can be gathered only from

the later part of the paragraph wherein it has been held that **"it is for the Government to fix the scale of pay of Principal. It can be on a special scale of pay or special allowance to that of a Senior Higher Secondary School Teacher in category No.II".** Thus what the Full Bench directed was to sanction post with a particular scale of pay or with special pay because the post of Principal which is compulsory for every institution categorised as No.1 in the Rules was already available. That was why it has been directed to be filled as per the Rules. It was a post with the same scale of pay as that of a Higher Secondary School teacher. That was why it was found that the Government has to fix the salary scale. This is further evident from the observation that **" if the appointments are made as per the Rules, that should be approved, if not already approved".**

9. Therefore, the contention of the appellants that the post has been sanctioned only as per G.O.

(MS).No.11/06 dated 6-1-2006 cannot be accepted. In the light of all these what can be gathered is that the purport of that G.O.was to give sanction of the post of Principal in the scale of pay of Rs.7200-11400 . This can only be the interpretation in the light of the dictum laid down in **Shaji v. Ramachandran [2003 (2)K.L.T.814],** a judgment of the Division Bench which has been specifically referred to by the Full Bench. In paragraph 23 thereof it has been held as under:

> *"23. As already noticed R.3 provides that "the service of every aided Higher Secondary School shall consist of all or any of the... categories of posts as the Director may sanction." The post of Principal is a solitary post in category 1. Categories 2 and 3 relate to the appointment school teachers in two different scales. These relate to 39 subjects. Thus, the Rule clearly provides that there shall be a Principal and teachers. So far as the sanction of the post is concerned, in our view, the Director has no discretion in the matter of office of the*

Principal. He can only make a choice in respect of the other categories whereby he can lay down that there may be no teacher to teach the subjects like German, Latin, Russian languages or those in which the number of students is not adequate. However, it shall not be open to the Director to say that the School shall function without a Principal who alone can be the Academic and Administrative head. In view of this position, the contention that the appointment of the 6th respondent cannot be approved, as the post of Principal has not been sanctioned, is wholly untenable. It cannot be sustained."

10. That was also a case wherein filling up of posts of Principal in an Aided Higher Secondary School has been considered. It has been made clear that going by the Rules in Chapter XXXII K.E.R., a post has already been sanctioned to every school as categorised in the said Rules. Therefore, that Division Bench held that **"the rule clearly provides**

that there shall be a Principal and teachers. So far as the sanction of the post is concerned, in our view, the Director has no discretion in the matter of office of the Principal. He can only make a choice in respect of the other categories whereby he can lay down that there may be no teacher to teach the subjects like German, Latin, Russian languages or those in which the number of students is not adequate. However, it shall not be open to the Director to say that the School shall function without a Principal who alone can be the Academic and Administration Head." Therefore, there was a post existing from the proclamation of the Rules as contained in Chapter XXXII with effect from 12-11-2006 onwards.

11. The appointment of Janaki was based on a selection conducted. It is revealed by Ext.P3 and the appointment order, Ext.P2, is dated 4-10-2004. That has been duly forwarded by the Manager for approval. Neither Ext.P3 nor Ext.P2 reveals that that

appointment was a temporary appointment or a time bound appointment or ad hoc arrangement. Necessarily the persons selected will have a legitimate impression and expectation that what has been promised to her was a regular post of Principal whereby she had changed her status and assumed the appointment as Principal in that position. Therefore, Ext.P2 appointment can be regarded only as a regular appointment. Even otherwise that was an appointment taken up following the procedure mentioned in Note-1 in Category 1 below Rule 1, Chapter XXXII K.E.R. Appointment was made as per Ext.P2. Proposal for approval was also forwarded by the Manager. The proposal on Ext.P2 appointment has been duly forwarded to the Director and the Director has considered and approved the same as per Ext.P9. Of course, there was inordinate delay in the matter of approval of Ext.P2 appointment. Therefore, Ravindranath, the appellant in W.A.No.92/2007 was appointed in the place of Janaki by the Manager. It

was later clarified that there would not have been any objection in approving the appointment forwarded as per Ext.P2 and it resulted in Ext.P9. Ext.P9, though issued on 5-4-2006, is effective with effect from the date of appointment, viz.4-10-2004. Even the Full Bench had made clear that **"…..if the appointments are made as per the Rules that should be approved, if not already approved". A**s already mentioned Smt.Janaki has been appointed as Principal as per the Rules. Therefore, Ext.P9 approval is in terms of the said direction contained in the judgment of the Full Bench which was pronounced while the approval of appointment of Janaki was pending with the Director.

12. Moreover, it is also discernible from the decision of the Full Bench that ad hoc appointment as Principal who are educationally qualified shall be permitted to be continued on regular basis, provided they were continuing as on the date of the decision of the Full Bench. In such circumstances, there is no

reason to deny such consideration to an incumbent who has been duly appointed following the Rules. This is yet another aspect for continuance of Janaki as Principal. Therefore, we see no reason to interfere with the judgment impugned in these appeals and the appeals are dismissed.

Now considering the facts and circumstances, we are of the view that the cost of Rs.5,000/- shall not be imposed on the Manager as directed by the learned single Judge. That order is vacated.

Sd/-
K.A.ABDUL GAFOOR
JUDGE

Sd/-
K.R.UDAYABHANU,
JUDGE

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P.S.TO JUDGE